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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222833
Party	Defendant Damiani, Joseph L.
Correspondence Address	SCOTT H. KALIKO KALIKO & ASSOCIATES, LLC 883 HILLTOP TERRACE FRANKLIN LAKES, NJ 07417 skaliko@kalikolaw.com
Submission	Answer
Filer's Name	Scott H. Kaliko
Filer's e-mail	skaliko@kalikolaw.com
Signature	/Scott H Kaliko/
Date	08/17/2015
Attachments	Answer and Affirmative Defenses Notice of Opposition Filed by Avido, LLC.pdf(171452 bytes)

Damiani filed a use based application with the U.S. Patent and Trademark Office ("USPTO") for the mark AVIDO with Stylized Design, in International class 9, and that Damiani's mark is for "Computer software that provides web-based access to physical fitness, work-out and exercise applications and services through a web operating system or portal interface" and that such application was filed on December 16, 2014. Except as expressly stated herein, Damiani denies each of the allegations contained in Avido, LLC's Notice of Opposition.

ANSWER

1. Damiani, admits that the Opposer purports to own, although such attempts to register the mark to date have been unsuccessful, the name Avido with stylized design, in connection with Audio speakers; Batteries and battery chargers; Battery cases; Battery charge devices; Battery packs; Devices for hands-free use of mobile phones; Electric cables and wires; Electronic cables; Micro USB cables; Portable radios; USB cables; USB cables for cellphones as listed in Opposer's Notice of Opposition. Damiani is presently without knowledge or information sufficient to form a belief as to whether Opposer has used the purported mark in continuous use since May 2014 and is in the business other than those set forth in Opposer's Trademark Application Serial No. 86490504, filed December 24, 2014.

2. Damiani is presently without knowledge or information sufficient to form a belief as to whether the allegations set forth in Opposer's Paragraph 2 and therefore denies such assertions.

3. Damiani is presently without knowledge or information sufficient to form a belief as to whether the allegations set forth in Opposer's Paragraph 3 and therefore denies such assertions.

4. Damiani admits to Opposer's trademark application as set forth in Paragraph 1 and is presently without knowledge or information sufficient to form a belief as to whether the allegations set forth in the remainder of Opposer's Paragraph 4 and therefore denies such assertions.

5. Damiani is presently without knowledge or information sufficient to form a belief as to whether the allegations set forth in Opposer's Paragraph 5 and therefore denies such assertions.

6. Damiani is presently without knowledge or information sufficient to form a belief as to whether the allegations set forth in Opposer's Paragraph 6 and therefore denies such assertions.

7. Damiani admits to the allegations set forth in Paragraph 7.

8. Damiani admits to the allegations set forth in Paragraph 8.

9. Damiani denies the allegations set forth in Paragraph 9.

10. Damiani denies the allegations set forth in Paragraph 10.

11. Damiani denies the allegations set forth in Paragraph 11.

12. Damiani denies the allegations set forth in Paragraph 12.

13. Damiani denies the allegations set forth in Paragraph 13.

14. Damiani denies the allegations set forth in Paragraph 14.

FURTHER ANSWER AND AFFIRMATIVE DEFENSES

15. Further answering, Damiani states that the Notice of Opposition fails to state a claim upon which relief can be granted.

16. Further answering, Damiani states that there is no likelihood of confusion between the marks, or either of them, in U.S. Trademark Application Serial Nos. 86481753 and 86490504 and any mark, registration or application alleged by Opposer, nor is there any dilution of any such mark.

17. Further answering, Damiani states that Opposer's alleged Avido mark is not famous within the Lanham Act and accordingly, Opposer's claims based on a basis of likelihood of dilution must fail.

18. Further answering, Damiani states that Opposer's claims for relief in its Notice of Opposition are barred by the doctrines of laches, waiver and/or equitable estoppel.

19. Further answering, Damiani states that Opposer cannot demonstrate that it will be damaged by the registration of U.S. Trademark Application Serial No. 86481753.

WHEREFORE, Applicant Damiani, Inc. denies that Opposer, Avido, LLC, is entitled to any relief as sought in its Notice of Opposition, which should therefore be dismissed in its entirety; and prays that Applicant's U.S. Trademark Application Serial No. 86481753 be approved for registration.

Dated: 08/17/2015

CERTIFICATE OF MAILING

I hereby certify that this document is being filed with the U.S. Patent & Trademark Office, Trademark Trial and Appeal Board, via the TTAB's ESTTA procedure, on August 17, 2015



Respectfully Submitted,



Scott H. Kaliko, Esq.
Kaliko & Associates, LLC
883 Hilltop Terrace
Franklin Lakes, NJ 07417
Tele: (201) 739-5555
Fax: (201) 644-0039

Attorney for Applicant Joseph L. Damiani

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and accurate copy of the foregoing Joseph L. Damiani Answer and Affirmative Defenses to Notice of Opposition, was transmitted by U.S. Postal Service, first class postage prepaid, on August 17, 2015 to the following:

Kevin S. Lance
Avido, LLC
11622 Log Jump Trail
Ellicott City, MD 21042
UNITED STATES
info@avidopower.com

Attorney for Opposer Avido, LLC


